

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: W.R. GRACE & CO., <i>et al.</i>, Debtors.	§ § § § § §	Chapter 11 Jointly Administered Case No. 01-01139 (KJC)
---	--	--

**FEE AUDITOR'S FINAL REPORT REGARDING THE NINETY-NINTH
MONTHLY APPLICATION AND THE FINAL APPLICATION OF BEVERIDGE &
DIAMOND, P.C., FOR COMPENSATION AND FOR REIMBURSEMENT
OF EXPENSES FOR MAY 12, 2005 THROUGH FEBRUARY 3, 2014**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Ninety-Ninth Monthly Application and the Final Application of Beveridge & Diamond, P.C., for Compensation and for Reimbursement of Expenses for May 12, 2005 through February 3, 2014 (the "Applications").

BACKGROUND

1. Beveridge & Diamond, P.C. ("Beveridge & Diamond"), was retained as special counsel to the Debtors. In the Applications, Beveridge & Diamond seeks approval of fees and expenses as follows: fees totaling \$59,678.55 and expenses totaling \$278.19 for its services from January 1, 2014 through January 31, 2014 (the "Ninety-Ninth Monthly Application"), and final

approval of fees totaling \$3,631,102.91¹ and expenses totaling \$51,064.16² for its services from May 12, 2005 through February 3, 2014 (the “Final Application Period”).

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2014, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, Issued January 30, 1996 (the “U.S. Trustee Guidelines”), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We emailed an inquiry to Beveridge & Diamond based upon our review, and we received a response from Beveridge & Diamond, portions of which response are quoted herein.

DISCUSSION

Ninety-Ninth Monthly Application

¹We note that the total of the fees requested in Beveridge & Diamond’s 35 prior fee applications, plus the compensation sought in the Ninety-Ninth Monthly Application, is \$3,577,145.21. It does not appear that Beveridge & Diamond has deducted from this amount any of the reductions ordered by the Court for the prior periods, which periods are discussed in more detail in paragraph 6, to arrive at the figure it seeks of \$3,631,102.91. We note that the Court has ruled on the First through Fifty-First Interim Periods, but no ruling has been made on the Fifty-Second Interim Period.

²We note that the total of the expenses requested in Beveridge & Diamond’s 35 prior fee applications, plus the expenses sought in the Ninety-Ninth Monthly Application, is \$50,652.88. It does not appear that Beveridge & Diamond has deducted from this amount any of the reductions ordered by the Court for the prior periods, which periods are discussed in more detail in paragraph 6, to arrive at the figure it seeks of \$51,064.16. We note that the Court has ruled on the First through Fifty-First Interim Periods, but no ruling has been made on the Fifty-Second Interim Period.

3. We have no issues with, or objections to, the fees and expenses in Beveridge & Diamond's Ninety-Ninth Monthly Application.

4. Thus, we recommend approval of \$59,678.55 in fees and \$278.19 in expenses for Beveridge & Diamond's Ninety-Ninth Monthly Application.

Final Application Period

5. We noted that although Beveridge & Diamond had requested final approval of fees totaling \$3,631,102.91, we calculated Beveridge & Diamond's final fees at \$3,576,170.21, for a difference of \$54,932.70. We also noted that Beveridge & Diamond had requested final approval of expenses totaling \$51,064.16, whereas we calculated Beveridge & Diamond's final expenses at \$50,062.92, for a difference of \$1,001.24. We provided our calculations to Beveridge & Diamond, and Beveridge & Diamond responded:

This is in response to your email to Pamela Marks regarding the discrepancy with our figures in our Final Application previously submitted. I was able to reconcile our differences and your numbers are correct.... I apologize for the errors in our original calculations which were due to a number of reasons and were completely inadvertent.³

We appreciate Beveridge & Diamond's response and recommend that Beveridge & Diamond's final fee request be reduced by \$54,932.70 and its final expense request be reduced by \$1,001.24.

Prior Interim Applications

6. We note that we previously filed the following final reports for Beveridge & Diamond's prior interim applications, which final reports we incorporate by reference herein, and we also note the following orders that ruled on Beveridge & Diamond's prior interim fee

³Beveridge & Diamond also offered to file an amended final application, but we advised Beveridge & Diamond that we did not believe an amended application was necessary.

applications:

18th Period: Fee Auditor's Amended Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Eighteenth Interim Period (Docket #12019), filed on or about March 9, 2006, in which we recommended approval of fees totaling \$149,841.25 and expenses totaling \$2,726.19. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Eighteenth Period, dated March 27, 2006 (Docket #12121).

19th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Nineteenth Interim Period (Docket #12525), filed on or about May 25, 2006, in which we recommended approval of fees totaling \$65,800.00 and expenses totaling \$1,703.05. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Nineteenth Period, dated June 16, 2006 (Docket #12660).

20th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twentieth Interim Period (Docket #13183), filed on or about September 8, 2006, in which we recommended approval of fees totaling \$38,671.25 and expenses totaling \$400.22. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twentieth Period, dated September 26, 2006 (Docket #13298).

21st Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twenty-First Interim Period (Docket #13963), filed on or about December 8, 2006, in which we recommended approval of fees totaling \$52,058.75 and expenses totaling \$869.44. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-First Period, dated December 19, 2006 (Docket #14069).

22nd Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twenty-Second Interim Period (Docket #14868), filed on or about March 15, 2007, in which we recommended approval of fees totaling \$26,108.75 and expenses totaling \$433.35. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Second Period, dated May 3, 2007 (Docket #15494).

23rd Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twenty-Third Interim Period (Docket #16037), filed on or about June 13, 2007, in which we recommended approval of fees totaling \$97,555.00 and expenses totaling \$ 973.91. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Third Period, dated June 20, 2007 (Docket #16105).

24th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications

with No Fee or Expense Issues for the Twenty-Fourth Interim Period (Docket #16786), filed on or about September 10, 2007, in which we recommended approval of fees totaling \$121,845.00 and expenses totaling \$786.17. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Fourth Period, dated September 25, 2007 (Docket #16916).

25th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twenty-Fifth Interim Period (Docket #17542), filed on or about December 4, 2007, in which we recommended approval of fees totaling \$75,283.75 and expenses totaling \$1,036.96. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Fifth Period, dated December 13, 2007 (Docket #17629).

26th Period: Fee Auditor's Final Report Regarding Fee Application of Beveridge & Diamond, P.C. for the Twenty-Sixth Interim Period (Docket #18129), filed on or about February 27, 2008, in which we recommended approval of fees totaling \$79,547.50 and expenses totaling \$1,128.12, reflecting our recommended reduction of \$975.00 in fees, as further explained in paragraph 3 of that final report. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Sixth Period, dated March 12, 2008 (Docket #18270).

27th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications

with No Fee or Expense Issues for the Twenty-Seventh Interim Period (Docket #18887), filed on or about June 9, 2008, in which we recommended approval of fees totaling \$21,087.50 and expenses totaling \$1,045.60. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Seventh Period, dated June 23, 2008 (Docket #18989).

28th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twenty-Eighth Interim Period (Docket #19535), filed on or about September 15, 2008, in which we recommended approval of fees totaling \$25,800.00 and expenses totaling \$155.54. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Eighth Period, dated October 1, 2008 (Docket #19663).

29th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twenty-Ninth Interim Period (Docket #20150), filed on or about November 26, 2008, in which we recommended approval of fees totaling \$77,219.00 and expenses totaling \$1,458.81. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Ninth Period, dated December 17, 2008 (Docket #20283).

30th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirtieth Interim Period (Docket

#21063), filed on or about March 21, 2009, in which we recommended approval of fees totaling \$144,089.00 and expenses totaling \$986.54. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirtieth Period, dated April 2, 2009 (Docket #21173).

31st Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirty-First Interim Period (Docket #22047), filed on or about June 10, 2009, in which we recommended approval of fees totaling \$4,982.50 and expenses totaling \$901.90. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-First Period, dated July 7, 2009 (Docket #22354).

32nd Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirty-Second Interim Period (Docket #23240), filed on or about September 15, 2009, in which we recommended approval of fees totaling \$72,950.00 and expenses totaling \$564.55. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Second Period, dated September 28, 2009 (Docket #23352).

33rd Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirty-Third Interim Period (Docket #23927), filed on or about December 3, 2009, in which we recommended approval of fees totaling \$172,459.70 and expenses totaling \$2,682.67.

These recommendations were adopted in the Order Approving Quarterly Fee

Applications for the Thirty-Third Period, dated December 11, 2009 (Docket #23996).

34th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirty-Fourth Interim Period (Docket #24438), filed on or about March 11, 2010, in which we recommended approval of fees totaling \$15,799.50 and expenses totaling \$593.83. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Fourth Period, dated March 19, 2010 (Docket #24470).

35th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirty-Fifth Interim Period (Docket #24856), filed on or about May 28, 2010, in which we recommended approval of fees totaling \$37,298.50 and expenses totaling \$216.14. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Fifth Period, dated June 7, 2010 (Docket #24917).

36th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirty-Sixth Interim Period (Docket #25384), filed on or about September 10, 2010, in which we recommended approval of fees totaling \$31,595.00 and expenses totaling \$60.22. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Sixth Period, dated September 13, 2010 (Docket #25397).

- 37th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirty-Seventh Interim Period (Docket #25850), filed on or about December 2, 2010, in which we recommended approval of fees totaling \$37,960.00 and expenses totaling \$126.03. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Seventh Period, dated December 10, 2010 (Docket #25905).
- 38th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirty-Eighth Interim Period (Docket #26519), filed on or about March 9, 2011, in which we recommended approval of fees totaling \$48,387.50 and expenses totaling \$504.71. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Eighth Period, dated March 25, 2011 (Docket #26627).
- 39th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirty-Ninth Interim Period (Docket #27116), filed on or about June 21, 2011, in which we recommended approval of fees totaling \$45,394.50 and expenses totaling \$449.97. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Ninth Period, dated June 30, 2011 (Docket #27188).
- 40th Period: Fee Auditor's Amended Combined Final Report Regarding Those Fee

Applications with *De Minimis* or No Fee or Expense Issues for the Fortieth Interim Period (Docket #27507), filed on or about August 25, 2011, in which we recommended approval of fees totaling \$18,745.50 and expenses totaling \$150.90. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Fortieth Period, dated September 20, 2011 (Docket #27622).

41st Period: Fee Auditor's Amended Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Forty-First Interim Period (Docket #28070), filed on or about December 2, 2011, in which we recommended approval of fees totaling \$38,083.50 and expenses totaling \$133.91. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Forty-First Period, dated December 14, 2011 (Docket #28150).

42nd Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Forty-Second Interim Period (Docket #28548), filed on or about February 20, 2012, in which we recommended approval of fees totaling \$49,575.00 and expenses totaling \$704.83. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Forty-Second Period, dated March 23, 2012 (Docket #28705).

43rd Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Forty-Fourth Interim

Period (Docket #29449), filed on or about August 13, 2012, in which we recommended approval of fees totaling \$109,020.00 and expenses totaling \$207.09. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Forty-Fourth Period, dated October 19, 2012 (Docket #29746).

44th Period: Fee Auditor's Final Report Regarding Fee Application of Beveridge & Diamond, P.C., for the Forty-Fourth Interim Period (Docket #29451), filed on or about August 13, 2012, in which we recommended approval of fees totaling \$328,439.24 and expenses totaling \$5,532.41, reflecting our recommend reduction of \$551.26 in expenses, as further explained in paragraphs 7 and 8 of that final report. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Forty-Fourth Period, dated October 19, 2012 (Docket #29746).

45th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Forty-Sixth Interim Period (Docket #30382), filed on or about March 7, 2013, in which we recommended approval of fees totaling \$233,953.24 and expenses totaling \$7,892.98, reflecting our recommend reduction of \$38.70 in expenses, as further explained in footnote 11 of that final report. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Forty-Sixth Period, dated March 27, 2013 (Docket #30440).

46th Period: Fee Auditor's Final Report Regarding Fee Application of Beveridge &

Diamond, P.C., for the Forty-Sixth Interim Period (Docket #30377), filed on or about March 6, 2013, in which we recommended approval of fees totaling \$330,878.00 and expenses totaling \$1,018.19. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Forty-Sixth Period, dated March 27, 2013 (Docket #30440).

47th Period: Fee Auditor's Amended Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Forty-Seventh Interim Period (Docket #30840), filed on or about July 17, 2013, in which we recommended approval of fees totaling \$190,485.08 and expenses totaling \$6,284.25. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Forty-Seventh Period, dated July 31, 2013 (Docket #30907).

48th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Forty-Eighth Interim Period (Docket #31080), filed on or about September 6, 2013, in which we recommended approval of fees totaling \$181,453.95 and expenses totaling \$2,155.60. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Forty-Eighth Period, dated September 24, 2013 (Docket #31158).

49th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Forty-Ninth Interim Period (Docket #31404), filed on or about November 26, 2013, in which we

recommended approval of fees totaling \$157,795.20 and expenses totaling \$1,497.01. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Forty-Ninth Period, dated December 17, 2013 (Docket #31482).

50th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Fiftieth Interim Period (Docket #31838), filed on or about March 11, 2014, in which we recommended approval of fees totaling \$188,141.85 and expenses totaling \$3,907.00. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Fiftieth Period, dated March 31, 2014 (Docket #31963).

51st Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Fifty-First Interim Application Period (Docket #32197), filed on or about May 13, 2014, in which we recommended approval of fees totaling \$248,187.15 and expenses totaling (\$1.71). These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Fifty-First Period, dated May 23, 2014 (Docket #32216).

7. We have reviewed the final reports and orders allowing fees and expenses for the prior interim periods, and we do not believe there is any reason to change any of the amounts awarded for the prior interim periods, with the exception of the Thirtieth Interim Period. In the order submitted to the Court for the Thirtieth Interim Period, Beveridge & Diamond's expense award is

listed as \$986.54, when it should have been \$1,484.89, for a difference of \$498.35. We have made the foregoing correction to our calculation of Beveridge & Diamond's final expenses. Our calculation of Beveridge & Diamond's final expenses (\$50,062.92) is based on the corrected figure, as is our recommended expense reduction in paragraphs 5. Thus, it is not necessary to make any further adjustments to Beveridge & Diamond's final expense request.

CONCLUSION

8. Thus, we recommend final approval of \$3,576,170.21 in fees (\$3,631,102.91⁴ minus \$54,932.70)⁵ and \$50,062.92 in expenses (\$51,064.16⁶ minus \$1,001.24)⁷ for Beveridge & Diamond's services for the Final Application Period.

⁴We note that the total of the fees requested in Beveridge & Diamond's 35 prior fee applications, plus the compensation sought in the Ninety-Ninth Monthly Application, is \$3,577,145.21. It does not appear that Beveridge & Diamond has deducted from this amount any of the reductions ordered by the Court for the prior periods, which periods are discussed in more detail in paragraph 6, to arrive at the figure it seeks of \$3,631,102.91. We note that the Court has ruled on the First through Fifty-First Interim Periods, but no ruling has been made on the Fifty-Second Interim Period.

⁵See paragraph 5.

⁶We note that the total of the expenses requested in Beveridge & Diamond's 35 prior fee applications, plus the expenses sought in the Ninety-Ninth Monthly Application, is \$50,652.88. It does not appear that Beveridge & Diamond has deducted from this amount any of the reductions ordered by the Court for the prior periods, which periods are discussed in more detail in paragraph 6, to arrive at the figure it seeks of \$51,064.16. We note that the Court has ruled on the First through Fifty-First Interim Periods, but no ruling has been made on the Fifty-Second Interim Period.

⁷See paragraph 5.

Respectfully submitted,

WARREN H. SMITH & ASSOCIATES, P.C.



By: _____

Warren H. Smith

Texas State Bar No. 18757050

2235 Ridge Road, Suite 105

Rockwall, Texas 75087

214-698-3868

214-722-0081 (fax)

whsmith@whsmithlaw.com

FEE AUDITOR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served by First Class United States mail to the attached service list on this 19th day of July, 2014.



Warren H. Smith

SERVICE LIST

Notice Parties

Applicant

Pamela D. Marks
BEVERIDGE & DIAMOND, P.C.
201 N. Charles Street, Suite 2210
Baltimore, MD 21201

The Debtors

Richard Finke
Assistant General Counsel
W.R. Grace & Co.
7500 Grace Drive
Columbia, MD 21044

United States Trustee

Richard Schepacarter
Office of the United States Trustee
844 King Street, Lockbox 35, Room 2207
Wilmington, DE 19801

Counsel for the Debtors

John Donley
Adam Paul
Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, IL 60654

Laura Davis Jones, Esq.
James E. O'Neill
Pachulski Stang Ziehl & Jones LLP
919 North Market Street, 17th Floor
P.O. Box 8705
Wilmington, DE 19899-8705

Counsel to the Official Committee of Unsecured Creditors

Denise Wildes
Stroock & Stroock & Lavan
180 Maiden Lane
New York, NY 10038-4982

Michael R. Lastowski
Duane Morris LLP
222 Delaware Avenue, Suite 1600
Wilmington, DE 19801

Counsel to the Official Committee of Property Damage Claimants

Scott L. Baena
Jay Sakalo
Bilzin, Sumberg, Baena, Price & Axelrod
1450 Brickell Avenue, Suite 2300
Miami, FL 33131

Michael B. Joseph
Theodore J. Tacconelli
Lisa Coggins
Ferry & Joseph, P.A.
824 Market Street, Suite 904
Wilmington, DE 19801

Counsel to the Official Committee of Personal Injury Claimants

Elihu Inselbuch
Rita Tobin
Caplin & Drysdale
600 Lexington Avenue, 21st Floor
New York, NY 10022-6000

Marla R. Eskin
Mark Hurford
Kathleen Campbell Davis
Campbell & Levine, LLC
222 Delaware Avenue, Suite 1620
Wilmington, DE 19801

Counsel to the Official Committee of Equity Holders

Philip Bentley
David E. Blabey, Jr.
Kramer Levin Naftalis & Frankel
1177 Avenue of the Americas
New York, NY 10036

Teresa K.D. Currier
Saul Ewing LLP
222 Delaware Avenue
P.O. Box 1266
Wilmington, DE 19899